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In the
Supreme Court of the United States

OCTOBER TERM, 1965

No. 1270

NANTUCKET EXPRESS LINES, INC., ISLAND STEAMSHIP LINES, INC., and JOSEPH T. GELINAS,
PETITIONERS,

v.

WOODS HOLE, MARTHA'S VINEYARD & NANTUCKET STEAMSHIP AUTHORITY,
RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

BRIEF FOR RESPONDENT IN OPPOSITION

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The Woods Hole, Martha's Vineyard and Nantucket Steamship Authority, respondent herein, respectfully submits the following in opposition to the Petition for a Writ of Certiorari filed May 2, 1966.

Question Presented

Was the decision in a prior suit on the same cause of action res judicata?

Constitutional Provisions Involved

None.

Statement

The essentials of the case clearly appear from the decision of the Court below. (Petition, pp. 7-10).

In 1959, petitioners were enjoined from using a particular vessel in violation of applicable state law. (Petition. p. 7).

In 1962, petitioners brought suit to set aside the injunction, and a final decree was entered in that case. (Petition, p. 9).

This suit is for the same cause of action, and the decision of the court below was that the decision in the prior suit was res judicata. (Petition, pp. 9-10).

Argument

The decision of the Court below is based upon, and only upon, state law, and therefore, the petition is patently frivolous. This is apparent from the most casual reading of the decision of the Supreme Judicial Court, which is based upon a routine application of the doctrine of *res judicata*. A suit was brought, and disposed of, in 1962 which raised certain issues. Another suit was brought in 1965 upon the same cause of action. All the Supreme Judicial Court did was hold that

> "a reconsideration of the 1959 decree is barred by a prior adjudication in a proceeding between the same parties or their privies involving the same issues." (Petition, p. 9)

Elaborating, the Supreme Judicial Court stated as follows:

> "Thus, in 1962 the new matter now relied upon by the petitioners was in existence. It was then relied upon as the basis for seeking review of the 1959 decree. A final decree was entered in the 1962 proceeding and the petitioners are bound by that adjudication 'as to every issue that in fact was or in law might have been litigated.' *Cleaveland* v. *Malden Sav. Bank,* 291 Mass. 295, 298. *Willett* v. *Webster,* 337 Mass. 98, 102. All that the petitioners seek to accomplish by the present proceeding might have been litigated under the 1962 bill of review. That the decree was entered by consent does not make it any less conclusive. *C. A. Briggs Co.* v. *National Wafer Co.,* 215 Mass. 100, 109. *Fishman* v. *Alberts,* 321 Mass. 280, 281. A final decree entered in a bill of review is as much an adjudication for the purposes of the doctrine of res judicata as is any other final decree. See Restatement: Judgments, § 112, comment i. See also *Gordinier's Appeal,* 89 Pa. 528; *Frauenthal's Appeal,* 100 Pa. 290, 295-296."

There is nothing more to the case and the petition, accordingly, must be denied because the decision of the court below is based solely upon an independent non-federal ground.

Conclusion

For the reasons stated, the petition should be denied.

Respectfully submitted,

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